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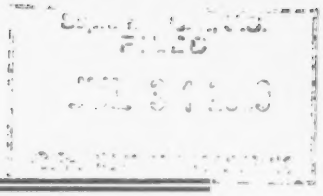

In the Supreme Court of the United States

REDSTONE RESOURCES, INC.,
Petitioner,

v.

HOLME ROBERTS & OWEN LLP; and PHILLIP CLARK,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS

RESPONDENTS' BRIEF IN OPPOSITION

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PARTIES TO THE CASE AND CORPORATE DISCLOSURE STATEMENT

Petitioner is Redstone Resources, Inc. Respondents are Holme Roberts & Owen LLP and Phillip Clark.

Respondent Holme Roberts & Owen LLP has no parent corporation and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

PARTIES TO THE CASE AND CORPORATE DISCLOSURE STATEMENT i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT OF THE CASE 1

A. REASONS FOR DENYING REDSTONE'S PETITION FOR WRIT OF CERTIORARI. 2

1. The Court Lacks Jurisdiction Pursuant to 28 U.S.C. § 1257(a) Because This Case Presents No Federal Issues. 2

a. Granting Attorneys' Motion for Summary Judgment Did Not Amount to a Violation of Redstone's Due Process Rights, as Statute of Limitations Issues Can Be Decided as a Matter of Law. 4

b. This Case Involved Routine Application of Well-Established Principles of Law, and Therefore Does Not Trigger Fifth

Amendment Due Process Issues..... 6

c. There Was No Deprivation of Its Fifth Amendment Due Process Rights Because Redstone Was Given More Than Sufficient Opportunity to Adequately Oppose the Motion for Summary Judgment..... 8

2. The Case Presents No Compelling Reasons for Review Pursuant to Sup. Ct. R. 10..... 10

CONCLUSION..... 11

TABLE OF AUTHORITIES

Page

CASES

AYH Holdings, Inc. v. Avreco, Inc.,
826 N.E.2d 1111 (Ill. App. Ct. 2005)..... 4-5

Beaird v. Seagate Tech., Inc.,
145 F.3d 1159 (10th Cir. 1998) 9

Bock v. Am. Growth Fund Sponsors, Inc.,
904 P.2d 1381 (Colo. App. 1995) 6

Broker House Int'l, Ltd. v. Bendelow,
952 P.2d 860 (Colo. App. 1998) 4, 7

Castello v. Kalis,
816 N.E.2d 782 (Ill. App. Ct. 2004)..... 5

Colburn v. Kopit,
59 P.3d 295 (Colo. App. 2002) 4, 5

Denver, S.P. & P.R. Co. v. Conway,
5 P. 142 (Colo. 1884)..... 6

Jones v. King Res. Co.,
509 P.2d 814 (Colo. App. 1973) 6

Love v. Fire Ins. Exch.,
221 Cal. App. 3d 1136 (Cal. Ct. App. 1990).... 4

Morris v. Geer,
720 P.2d 994 (Colo. App. 1986) 4

Morrison v. Goff,
91 P.3d 1050 (Colo. 2004) 7

Olson v. State Farm Mut. Auto. Ins. Co.,
174 P.3d 849 (Colo. App. 2007) 9

Palisades Nat'l Bank v. Williams,
816 P.2d 961 (Colo. App. 1991) 4

Rauschenberger v. Radetsky,
745 P.2d 640 (Colo. 1987) 5

STATUTES

28 U.S.C. § 1257(a) 2, 3, 8, 11

COLO. REV. STAT. § 13-80-108(1) 7

Colo. Rev. Stat. § 13-80-108(3) 7

RULES

Colo. R. Civ. P. 121, § 1-15(4) 9

Sup. Ct. R. 10 ..... 2, 10, 11

RESPONDENTS' BRIEF IN OPPOSITION

Pursuant to Sup. Ct. R. 15, the Respondents Holme Roberts & Owen LLP and Phillip Clark hereby submit this Brief in Opposition to the Petition for Certiorari.

STATEMENT OF THE CASE

This is a legal malpractice case under Colorado law. Respondents Holme Roberts & Owen LLP ("HRO") and Phillip Clark (collectively "Lawyers") provided legal services to Petitioner Redstone Resources, Inc. ("Redstone") in connection with certain stock transactions. (App. A to Pet. Cert., p. 2a, ¶ 3.)[1] After terminating the Lawyers as its counsel, Redstone lost a suit relating to those stock transactions, and subsequently filed for bankruptcy in 2004. (*Id.*)

Almost two years after filing for bankruptcy, Redstone sued the Lawyers, asserting Colorado common law claims for breach of fiduciary duty, aiding and abetting breach of fiduciary duty, negligent misrepresentation and fraud and conspiracy relating to Lawyers' work on the stock transactions. (*Id.* at p. 3a, ¶ 1.) Lawyers moved for summary judgment on the grounds that the applicable statute of limitations on each claim had

[1] All citations to the Appendices refer to the Appendices accompanying Redstone's Petition for a Writ of Certiorari, Docket No. 09-13.

expired as a matter of law long before Redstone filed for bankruptcy. (*Id.* at ¶ 2.) The trial court agreed, and dismissed the claims. (App. B to Pet. Cert., p. 30b.) The Colorado Court of Appeals, after a *de novo* review of the undisputed facts in the record, affirmed the dismissal of the claims. (App. A, p. 17a.) The Colorado Supreme Court denied Redstone's petition for review on *certiorari*. (App. C to Pet. Cert.)

A. Reasons for Denying Redstone's Petition for Writ of Certiorari.

Redstone's Petition for Certiorari should be denied because there are no federal issues presented by this case. Specifically, this Court lacks jurisdiction of this case under 28 U.S.C. § 1257(a), which limits this Court to review of federal statutory or constitutional issues only. Moreover, Redstone cannot under any stretch of the imagination meet the standards for review in Sup. Ct. R. 10, which requires "compelling reasons" for the grant of a writ of *certiorari*. The Court should reject Redstone's tortured efforts to convert this garden-variety state law case into a federal constitutional matter, and deny the Petition for Certiorari.

1. The Court Lacks Jurisdiction Pursuant to 28 U.S.C. § 1257(a) Because This Case Presents No Federal Issues.

Redstone contends that this Court has jurisdiction over this case pursuant to 28 U.S.C. §

1257(a)[2], which allows review of final judgments rendered by the highest court of a State where "the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution . . ." Because this case presents no federal statutory or constitutional issues, this Court does not have jurisdiction.

Redstone contends that the trial court's entry of summary judgment somehow amounted to a deprivation of its Fifth Amendment due process rights. Specifically, Redstone claims that "[b]y granting [Attorneys'] motion for summary judgment, the lower courts denied Redstone due process of law by invidiously denying it of its day in court with respect to the issue of when it knew of [Attorneys' alleged] malpractice." (Pet., p. 12.) In addition, Redstone claims that it was "deprived of its opportunity to adequately oppose the motion for summary judgment by the trial court's rulings limiting the length of the response, denying oral argument, and denying a sur-reply." (Pet., p. 16.) On the contrary, it is well-settled that where the facts are not in dispute, summary judgment may be entered dismissing a claim as time-barred. Furthermore, the reasonable limits imposed by the trial court on the length of Redstone's response to the motion, and its refusal to allow oral argument or

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[2] The Petitioner erroneously cites to the statute as 28 U.S.C. § 1257(1), instead of 28 U.S.C. § 1257(a).

permit the filing of an extra brief, are routine matters within the discretion of a court. The procedures employed by the Colorado courts in no way denied Redstone a full and fair opportunity to respond to Attorneys' motion for summary judgment. Accordingly, the Court should deny Redstone's Petition for Certiorari.

a. **Granting Attorneys' Motion for Summary Judgment Did Not Amount to a Violation of Redstone's Due Process Rights, as Statute of Limitations Issues Can Be Decided as a Matter of Law.**

Colorado law is clear that "where it is shown that the plaintiff discovered, or reasonably should have discovered, the alleged tortious conduct as of a particular date, the statute of limitations issue may be decided as a *matter of law*." *Colburn v. Kopit*, 59 P.3d 295, 297 (Colo. App. 2002) (emphasis added) (citing *Broker House Int'l, Ltd. v. Bendelow*, 952 P.2d 860, 863 (Colo. App. 1998)); *see Palisades Nat'l Bank v. Williams*, 816 P.2d 961, 963 (Colo. App. 1991) (holding that "[i]f the undisputed fact clearly show that a plaintiff discovered, or reasonably should have discovered, an attorney's negligent conduct as of a particular date, the issue may be decided as a matter of law.") (citing *Morris v. Geer*, 720 P.2d 994 (Colo. App. 1986)). The same rule applies elsewhere. *See, e.g., Love v. Fire Ins. Exch.*, 221 Cal. App. 3d 1136, 1143 (Cal. Ct. App. 1990) (finding that "summary judgment is proper where the facts show the action is time barred as a matter of law."); *AYH Holdings,*

Inc. v. Avreco, Inc., 826 N.E.2d 1111, 1133 (Ill. App. Ct. 2005) (reasoning that "[w]here it is apparent from the undisputed facts that only one conclusion can be drawn, the question becomes one for the court[,] and can be resolved as a matter of law, making summary judgment on statute of limitation[s] grounds appropriate.") (quoting *Castello v. Kalis*, 816 N.E.2d 782 (Ill. App. Ct. 2004)).[3]

Like *Colburn*, the undisputed facts here showed when Redstone discovered or reasonably should have discovered the alleged conduct giving rise to its potential claims. (App. B, p. 22b-25b.) Consequently, the trial court ruled that Redstone's claims had expired as a matter of law pursuant to the applicable statutes of limitations. Reviewing the record *de novo*, the Colorado Court of Appeals also concluded that there were no disputed issues of materials fact as to when Redstone discovered or should have discovered its alleged claims against

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[3] In its Petition, Redstone mischaracterizes the case of *Rauschenberger v. Radetsky*, 745 P.2d 640, 644 (Colo. 1987), alleging that the case stands for the proposition that "summary judgment is not proper with respect to the issue of when plaintiff knew of the claim." (Pet., p. 18.) However, in *Rauschenberger*, the court did not assert a blanket rule that discovery of claims could not be determined through motions for summary judgment. Instead, the court pointed out that in this particular instance there were genuine issues of material fact with respect to discovery of the claim, and therefore a motion for summary judgment on these issues was not appropriate. *Id.* That is not the case here. In this case, unlike *Rauschenberger*, undisputed facts confirm Redstone's discovery of the claims. Therefore, a motion for summary judgment with respect to this issue was appropriate.

Attorneys. These are routine decisions of state law that courts make every day, and these decisions in no way can be construed as a deprivation of due process of law under the Fifth Amendment.

b. This Case Involved Routine Application of Well-Established Principles of Law, and Therefore Does Not Trigger Fifth Amendment Due Process Issues.

Based on documents submitted by Redstone itself, the trial court was able to determine the date that Redstone's officers had knowledge of the alleged claims against Attorneys. (App. B, p. 26b.) It is a well-accepted principle of law that knowledge of an officer is imputed to the corporation unless the officer has an interest adverse to the corporation or is committing a fraud on the corporation. *Bock v. Am. Growth Fund Sponsors, Inc.*, 904 P.2d 1381, 1384 (Colo. App. 1995) (citing *Jones v. King Res. Co.*, 509 P.2d 814, 816 (Colo. App. 1973)); *Denver, S.P. & P.R. Co. v. Conway*, 5 P. 142, 147 (Colo. 1884). The exception clearly did not apply in this case because after a full trial in a separate lawsuit, the court found that the Redstone officers did not engage in fraud. (App. B, p. 27b-28b.) Therefore, pursuant to well-established principles of law, the officers' knowledge of the potential claims against Lawyers was imputed to the corporation, Redstone. *Bock*, 904 P.2d at 1384. The clock on Redstone's alleged claims began ticking when its officers discovered or reasonably should have discovered the alleged conduct giving rise to such claims. Therefore, the

statutes of limitations on Redstone's claims had expired long before it filed for bankruptcy.

The Court of Appeals affirmed the expiration of Redstone's claims, albeit on different grounds. Under Colorado law, a claim accrues when the plaintiff discovers the alleged claims or should have discovered the alleged claims by exercise of reasonable diligence. *See* COLO. REV. STAT. § 13-80-108(1) ("a cause of action for injury to person . . . shall be considered to accrue on the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence."); Colo. Rev. Stat. § 13-80-108(3) ("[a] cause of action for fraud, misrepresentation . . . or deceit shall be considered to accrue on the date such fraud, misrepresentation, concealment, or deceit is discovered or should have been discovered by the exercise of reasonable diligence."); *Morrison v. Goff*, 91 P.3d 1050, 1053 (Colo. 2004) (ruling that a claim for legal malpractice accrues "when plaintiffs learn facts that would put a reasonable person on notice of the general nature of damage and that the damage was caused by the wrongful conduct of an attorney." (quoting *Broker House*, 952 P.2d at 863)). Reviewing the record *de novo*, the Court of Appeals applied these rules to undisputed facts to conclude that Redstone discovered or reasonably should have discovered the alleged conduct giving rise to the claims sometime in 2000. (App. A, p. 10a-13a.) Therefore, pursuant to the applicable statute of limitations, Redstone's claims had expired by the time it filed for bankruptcy.

This case presents no constitutional issues. In this case, the courts routinely applied well-established principles of law to undisputed facts to conclude that each of Redstone's claims had expired under the applicable statute of limitations. Such routine application of basic law did not deprive Redstone of its due process rights under the Fifth Amendment. As Redstone fails to meet the jurisdictional requirements for review under 28 U.S.C. § 1257(a), Redstone's Petition for Certiorari should be denied.

c. There Was No Deprivation of Its Fifth Amendment Due Process Rights Because Redstone Was Given More Than Sufficient Opportunity to Adequately Oppose the Motion for Summary Judgment.

Redstone argues that the trial court imposed procedural limitations that denied it the opportunity to adequately oppose Attorneys' motion for summary judgment. Specifically, Redstone complains about page limitations imposed by the trial court, as well as the trial court's refusal to hold oral argument or allow Redstone to file a sur-reply. Contrary to Redstone's contention, the record reflects that it had a full and fair opportunity to oppose the motion for summary judgment – in two courts – such that there was no deprivation of its due process rights under the Fifth Amendment.

Attorneys' motion for summary judgment in the trial court was 14 pages long. Redstone's initial response to the motion for summary judgment was

an astounding 52-pages long. The trial court struck Redstone's response because it exceeded the page limitations established under Colorado rules. Redstone re-submitted a brief consisting of 18 pages and 22 exhibits. Redstone also requested permission to file a sur-reply, but the trial court refused to permit further briefing. Pursuant to Colorado law, "a trial court has discretion to deny . . . [a] request to file a surreply . . ." *Olson v. State Farm Mut. Auto. Ins. Co.*, 174 P.3d 849, 860 (Colo. App. 2007) (citing *Beaird v. Seagate Tech., Inc.*, 145 F.3d 1159, 1164-65 (10th Cir. 1998)). Finally, Redstone requested that the court permit oral argument on the motion, but the court refused. Rule 121, § 1-15(4) of the Colorado Rules of Civil Procedure provides that "oral argument or an evidentiary hearing . . . may be allowed by the court at its discretion." Thus, Redstone was given all the opportunity to respond to the motion for summary judgment provided under Colorado law. The trial court's decision not to exercise its discretion to allow Redstone more opportunity than required by Colorado rules and practice does not amount to a deprivation of Redstone's due process rights.

Moreover, Redstone ignores that it had a further opportunity to present all its arguments in the Colorado Court of Appeals. In that court, which reviewed the grant of summary judgment *de novo*, Redstone not only filed an opening brief and a reply brief, but also participated in oral argument to the panel. Redstone made all the arguments it makes in this Court, namely that the summary judgment was inappropriate and that the trial court denied it a full

opportunity to present its case. The Court of Appeals carefully considered these arguments and rejected them in an unpublished opinion. There is thus no question that the Colorado courts afforded Redstone a full and fair opportunity to present its arguments before the claims were dismissed.

2. The Case Presents No Compelling Reasons for Review Pursuant to Sup. Ct. R. 10.

Pursuant to Sup. Ct. R. 10, "[r]eview on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for *compelling reasons*." (emphasis added). Since this case on its face involves no federal issue, the only conceivable basis for review is Sup. Ct. R. 10(b) and (c), which provides for review where:

> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.

As discussed previously, this case raises no federal statutory or constitutional issues. Therefore, there are no "compelling reasons" to justify granting Redstone's Petition for Certiorari, as Redstone undoubtedly fails to meet the standards for review pursuant to Sup. Ct. 10.

CONCLUSION

This case is nothing more than a routine application of state law, within a standard procedural framework, that quite literally occurs hundreds of time daily throughout this country. There are no federal issues presented. Thus, not only does this Court lack jurisdiction pursuant to 28 U.S.C. § 1257(a), but there are also no "compelling reasons" for review, as established under Sup. Ct. R. 10. For these reasons, Respondents respectfully request that the United States Supreme Court deny Redstone's Petition for Certiorari in this matter.

Respectfully submitted,

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